

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Cheema Investments, LLC,
Appellant,

v.

Dawes County Board of Equalization,
Appellee.

Case Nos: 15R 0014 & 17R 0021

Decision and Order Affirming the Decisions
of the Dawes County Board of Equalization

For the Appellant:
Kuldip Singh,
Member.

For the Appellee:
Joe W. Stecher,
Deputy Dawes County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Dawes County, Nebraska. The parcel was improved with a 2,898 square foot home and a 576 square foot garage.¹ The legal description of the parcel is found at Exhibit 4. The property record card for the Subject Property is found at Exhibit 4.

II. PROCEDURAL HISTORY

The Dawes County Assessor (County Assessor) determined that the assessed value of the Subject Property was \$100,755 for tax year 2015² and \$42,815 for tax year 2017.³ Cheema Investments, LLC (the Taxpayer) protested each assessment to the Dawes County Board of Equalization (the County Board) and requested an assessed valuation of \$22,225 for tax year

¹ Evidence was received that after the effective dates for both of these appeals, a portion of the parcel was sold, including the garage.

² Exhibit 4:6-7.

³ Exhibit 2. No record was made as to why no appeal was filed for tax year 2016 for the Subject Property.

2015 and \$25,000 for tax year 2017. The County Board determined that the taxable value was \$100,755 for tax year 2015⁴ and \$42,815 for tax year 2017.⁵

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on September 14, 2018.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.⁶ When the Commission considers an appeal of a decision of a County Board of Equalization, a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."⁷

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁸

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁹ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁰

⁴ Exhibit 1.

⁵ Exhibit 2.

⁶ See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁷ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁸ *Id.*

⁹ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

¹⁰ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹¹ The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.¹²

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”¹³ The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”¹⁴ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁵

IV. VALUATION

A. Law

Under Nebraska law,

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹⁶

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”¹⁷ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁸ Taxable value is the percentage of actual value

¹¹ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. Of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

¹² *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹³ Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

¹⁴ Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

¹⁶ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁷ *Id.*

¹⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal., et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.¹⁹ All real property in Nebraska subject to taxation shall be assessed as of January 1.²⁰ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²¹

B. Findings of Fact & Analysis

Kuldip Singh, a Member of Cheema Investments, LLC, testified on behalf of the Taxpayer. Mr. Singh testified that the Taxpayer had paid \$77,000 for the Subject Property in 2012. As of December 2014, the property was vacant, and the Taxpayer had turned off the electricity and drained the water line. Mr. Singh testified to his belief that sometime during December 2014, water in the water pipes in the residence froze, ultimately resulting in substantial water damage to the interior of the residence. Mr. Singh testified that he was notified by his realtor of damage to the residence in late December 2014. The realtor did not testify and was not available for cross-examination. His statements to Mr. Singh constitute hearsay to the extent they were offered to prove the date of the water damage. Mr. Singh stated that he saw the damage himself sometime in January 2015.

Mr. Singh testified that sometime during January 2015, the Taxpayer hired a restoration company to remove ice and restore the property. The restoration work was completed prior to April 22, 2015, when the Taxpayer was billed \$12,819.46 by the restoration company.²² According to Mr. Singh, at the completion of the restoration work the residence had no working plumbing and the damaged walls and ceilings were stripped down to the wood studs.

Mr. Singh testified that the Taxpayer subsequently filed an insurance claim on an insured amount of \$79,700.²³ The insurance company then made a full coverage payment to the Taxpayer, minus coinsurance and deductible.²⁴

¹⁹ Neb. Rev. Stat. §77-131 (Reissue 2009).

²⁰ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

²¹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²² Exhibit 3:2.

²³ Exhibit 4:15.

²⁴ Exhibit 4:17.

The valuation of the Subject Property for January 1, 2015 does not account for the damage to the property, which the Taxpayer asserts occurred prior to the January 1, 2015 effective date. The Taxpayer further asserts that the valuation of the Subject Property for January 1, 2017 does not adequately account for the same damage.

With respect to the tax year 2015 valuation, the County Board offered evidence to rebut the Taxpayer's assertion that the damage occurred prior to January 1, 2015. In a Sworn Statement In Proof Of Loss (Sworn Statement), it is indicated that a water loss occurred on February 28, 2015.²⁵ The Sworn Statement is unsigned and not notarized. Whether this unsigned Sworn Statement was actually submitted to the insurance company is unclear in the record of this proceeding. Further, the County Board offered a document entitled "Statement of Loss²⁶," dated April 10, 2015, which also indicates a Date of Loss of February 28, 2015. This statement is also unsigned, and again it is unclear from the record in this proceeding whether this unsigned statement was actually the basis for the insurance claim. The issue, of course, is whether the Taxpayer actually signed the Sworn Statement or the Statement of Loss attesting to a date of loss of February 28, 2015. The County Board offered no other evidence to rebut the assertion that the loss occurred prior to January 1, 2015.

The Taxpayer offered further evidence regarding the date of loss in the form of certain utility bills.²⁷ Mr. Singh testified that the Subject Property residence was served by the Berryville Water Company for the provision of tap water. According to Mr. Singh, five or six neighboring properties shared a community well. It is apparent from the water bills that the Nebraska Public Power District provided the water to the Berryville Water Company. The record is unclear as to how the Berryville Water Company billed the Taxpayer. It is also unclear from the water bills and Mr. Singh's testimony how the bills stand for the proposition that the water damage occurred prior to January 1, 2015.

Evidence regarding the date of loss, therefore, is conflicting. And the Commission must weigh the credibility and reliability of such conflicting evidence. Based upon the record, the Commission cannot conclude that there is clear and convincing evidence that the water damage

²⁵ Exhibit 4:15.

²⁶ Exhibit 4:17.

²⁷ Exhibits 3:4, 3:5, and 3:6.

occurred prior to January 1, 2015. We therefore conclude that it was proper for the County Board to set the taxable value on the Subject Property for tax year 2015 as though the property had not yet incurred the water damage.

With respect to the tax year 2017 valuation, Mr. Singh testified that the residence had been uninhabitable since the time of the water damage. The damaged walls and ceilings were stripped in the restoration process and the broken water pipes had not been replaced or repaired. Mr. Singh testified that the Taxpayer did not deem the demolition costs to be cost effective. He also stated that an offer had been made for the Subject Property at \$10,000 to \$12,000, but that the Taxpayer had rejected the offer. Finally, Mr. Singh emphasized that the private drive leading to the Subject Property was steep and afforded limited access, especially after significant snowfalls.

As noted above, a Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued. The Taxpayer provided no evidence that the Commission is able to quantify to determine the actual value of the Subject Property for either tax year.

V. CONCLUSIONS OF LAW

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the appeals of the Taxpayer are denied and the decisions of the County Board are affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Dawes County Board of Equalization determining the taxable value of the Subject Property for tax years 2015 and 2017 are affirmed.
2. The taxable value of the Subject Property for tax year 2015 is \$100,755.
3. The taxable value of the Subject Property for tax year 2017 is \$42,815.

4. This Decision and Order, if no appeal is timely filed, shall be certified to the Dawes County Treasurer and the Dawes County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2015 and 2017.
8. This Decision and Order is effective for purposes of appeal on September 26, 2018.²⁸

Signed and Sealed: September 26, 2018

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

²⁸ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.